

Attorney Docket: 061069-0307278
Client Reference: SPO-2575



IPW ✓

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re PATENT APPLICATION of: KENTARO SEKIYAMA

Application No.: 10/735,853

Confirmation No: 3168

Filed: December 16, 2003

Group Art Unit:

Examiner:

Title: OPTICAL SYSTEM AND OPTICAL APPARATUS USING THE SAME

PETITION TRAVERSING NOTICE TO FILE MISSING ITEM(S) AND, IN THE ALTERNATIVE, COMPLETE RESPONSE TO NOTICE TO FILE MISSING PARTS, TWO MONTHS EXTENDED

**Mail Stop Missing Parts
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450**

Sir:

In response to the Notice to File Missing Item(s) mailed July 27, 2004, attached is a copy of the Response to Notice to File Missing Parts submitted June 15, 2004, which includes page 49 of the specification/claims, and the Patent Office date-stamped receipt evidencing that the U.S. Patent and Trademark Office received the entire specification/claims, including page 49, on June 15, 2004.

In the alternative, if this petition is not granted by the Patent and Trademark Office, since we are still within the period for responding to the Notice of Missing Parts, originally due on June 28, 2004, please treat this as a Response to File Missing Parts with a two month extension of time, in which case the \$130 surcharge is believed to be inapplicable since it was paid with the filing on June 15, 2004. The two month extension of time is authorized to be charged to our Deposit Account No. 03-3975 herewith. The Petition Fee is also authorized to be charged to our Deposit Account No. 03-3975 herewith.

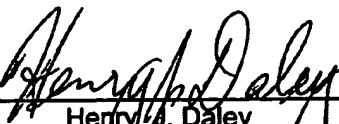
Please see attached PTO/SB/17 for payment of fees.

08/11/2004 STEUNEL1 00000010 033975 10735853

01 FC:1252 420.00 DA
02 FC:1460 130.00 DA

Adjustment date: 12/02/2004 SDIRETAL
08/11/2004 STEUNEL1 00000010 033975 10735853
01 FC:1252 420.00 CR

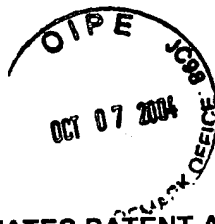
Respectfully submitted,
PILLSBURY WINTHROP LLP

By 
Henry J. Daley
Registration No. 42459
Telephone: 703.90-2044

Date: August 10, 2004

P.O. Box 10500
McLean, VA 22102
Customer No.: 00909

Attorney Docket: 061069-0307278
Client Reference: SPO-2575



DEP 7 REF
Room 307

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re PATENT APPLICATION of: KENTARO SEKIYAMA

Application No.: 10/735,853

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RESPONSE TO DECISION ON PETITION

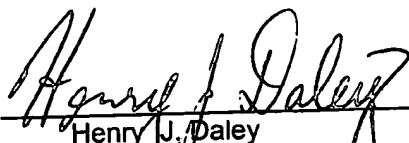
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

K 420.00

Sir:

In response to the Decision on Petition mailed September 29, 2004 (copy attached), Applicant would like to thank the Patent Office for granting our petition. However, in the second paragraph on page 2 of the Decision the Examiner states that the "receipt presented does not bear a USPTO date-stamp." Applicant respectfully points out that the Patent Office is in error and that a date-stamped copy was filed with our Response of August 10, 2004. The date-stamped copy was on top of the non-date-stamped originally filed copy, which may have caused the confusion. However, Applicant submits herewith another copy of the date-stamped copy only evidencing that the complete verified translation was received on June 15, 2004. It is therefore believed that the two month extension fee should also be refunded to our Deposit Account No. 03-3975, Order No. 61069/307278.

Respectfully submitted,
PILLSBURY WINTHROP LLP

By 
Henry J. Daley
Registration No. 42459
Telephone: 703.90-2044

Date: October 7, 2004

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McLean, VA 22102
Customer No.: 00909

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O I P E
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COPY

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RECEIPT FROM PTO FOR INDICATED ITEMS

(Do NOT Use for New or Continuing Applications of Any Kind)
Use 2 postcards for all New Applications (including cont/Div/CIP)
Use this sheet when filing CPA or RCE

Appln. No: 10/735,853	Atty: Henry J. Daley/joyce hill
First Inventor: KENTARO SEKIYAMA	Date: June 15, 2004
Title: OPTICAL SYSTEM AND OPTICAL APPARATUS USING THE SAME	Attorney Docket No: 061069-0307278

ENCLOSED:

- ☒ Preliminary Amendment
- ☒ Response to Missing Part.
- ☒ Replacement drawings

No. of Sheets of Drawings

Figures

- ☒ Declaration 3 of pages
- ☒ Assignment ☒ Request for Recordation

\$ Total Fee Charged to Deposit Account

OTHER:

CURRENT DUE DATE:





UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
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www.uspto.gov



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Paper No.

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SEP 29 2004

OFFICE OF PETITIONS

In re Application of
Kentaro Sekiyama
Application No. 10/735,853
Filed: December 16, 2003
Attorney Docket No. 061069-0307278

DECISION ON
PETITION

This is a decision on the "PETITION TRAVERSING NOTICE TO FILE MISSING ITEM(S) AND, IN THE ALTERNATIVE, COMPLETE RESPONSE TO NOTICE TO FILE MISSING PARTS, TWO MONTHS EXTENDED," filed August 10, 2004.

Application papers in the above-identified application were deposited on December 16, 2003. On April 28, 2004, the Office of Initial Patent Examination mailed a "Notice to File Missing Parts of Nonprovisional Application," requiring applicant to submit the following missing items: the statutory basic filing fee; an oath or declaration; a late surcharge under § 1.16(l); an English translation of the specification and a statement that the translation is accurate; the \$130 fee under § 1.17(i); and any additional claim fees which may be due. On June 15, 2004, applicant filed a response to this Notice.

However, on July 27, 2004, the Office of Initial Patent Examination mailed a "Withdrawal of Previously Sent Notice," notifying applicant that the Notice mailed April 28, 2004 was mailed in error and was withdrawn. A corrected Notice, setting forth a new period for reply, was enclosed. The corrected "Notice of Omitted Item(s) in a Nonprovisional Application," notified applicant that a filing date had been accorded to the application; however, page 49 of the specification appeared to have been omitted. In response, applicant timely filed the instant petition.

On instant petition, applicant asserts that page 49 of the English translation of the specification was filed on June 15, 2004. Petitioner states that, in support thereof, they are submitting the Patent Office date-stamped receipt evidencing that the Office received the entire specification/claims, including page 49, on June 15, 2004. In addition, applicant provides another copy of the English translation of the specification. Applicant further states that, in the alternative, please treat the papers filed August 10, 2004 as a further response to the Notice mailed April 28, 2004 and accept this response as timely with a two-month extension of time.

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The Office will accord a filing date to an application meeting the requirements of 35 U.S.C. 111(a), even though some or all of the application papers, including the written description and the claims, are in a language other than English and hence does not comply with 37 CFR 1.52. A review of the application file reveals that the application as filed, though in Japanese, was entitled to and was accorded a filing date of December 16, 2003. Further, the application as filed included "page 49" of the specification, albeit in Japanese.

However, a review of the application file further reveals that page 49 is not among the papers filed on June 15, 2004 (i.e., the English translation filed in reply to the "Notice to File Missing Parts of Nonprovisional Application"). Moreover, petitioner's evidence is not sufficient to show that the page was among the papers filed on June 15, 2004, but misplaced by the Office. The copy of the receipt presented does not bear a USPTO date-stamp. Thus, page 49 of the English translation is being treated as first submitted on August 10, 2004.

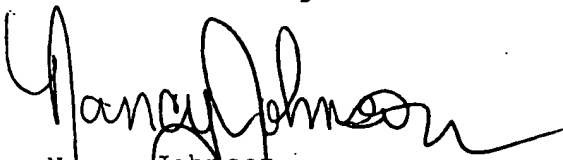
Nonetheless, the "Withdrawal of Previously Sent Notice," mailed July 27, 2004, was sent in error to the extent that it withdrew the requirements set forth in the "Notice to File Missing Parts of Nonprovisional Application," mailed April 28, 2004. A review of the application file supports a conclusion that the missing items were required. On June 15, 2004, applicant timely responded with an incomplete response. As the extendable period for reply continued to run, on the date of filing of the petition and response to Notice filed August 10, 2004 (and extension of time), the response may be accepted as timely filed on August 10, 2004.

In view thereof, the petition is GRANTED. Given the basis for granting the petition, the petition fee is being refunded to Deposit Account No. 03-3975, as authorized.

The application is being forwarded to the Office of Initial Patent Examination (OIPE) for:

- further processing with a filing date of December 16, 2003, using the application papers received in the Office on that date and the English translations thereof filed June 15, 2004; and
- processing of the response to the Notice to File Missing Parts Mailed April 28, 2004, including page 49 of the English translation, submitted on August 10, 2004.

Telephone inquiries specific to this decision should be directed to the undersigned at (571) 272-3219.


Nancy Johnson
Senior Petitions Attorney
Office of Petitions